

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Jeffrey A. Heyser,

Complainant,

vs.

AT&T Communications of California, Inc.,

Defendant.

Case 01-08-022
(Filed August 14, 2001)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

Summary

Pursuant to Rules 6(b)(3) and 6.3 of the Rules of Practice and Procedure, this ruling sets forth the procedural schedule, assigns a presiding officer, and addresses the scope of the proceeding following a second prehearing conference (PHC) held on February 4, 2002.

Background

Complainant alleges that AT&T Communications of California, Inc. (Defendant or AT&T) increased the rate for his One-Rate Calling Card Plan from \$.25 per minute to a variable rate that averaged \$1.00 per minute after he discontinued his AT&T long distance service. At Complainant's request, AT&T reinstated his calling card service and billing rate. Complainant alleges AT&T refused to adjust the old charges.

In its answer, Defendant admits that it changed the pricing of the calling card calls but states that the rate charged was the standard \$.69 per minute plus a \$.25 surcharge for in-state calls. Defendant alleges the Commission does not have jurisdiction over this matter, because the rates and terms for the One-Rate Calling Card Plan are part of an interstate tariff and under the jurisdiction of the Federal Communications Commission.

The Commission held PHCs on November 26, 2001, and February 4, 2002. After the first PHC and at the direction of the assigned administrative law judge (ALJ), Defendant submitted its intrastate tariff sheets in effect on October 23, 2000, which cover the One-Rate Calling Card Plan. Defendant filed a post PHC statement on February 13, 2002, pursuant to a February 5, 2002 ALJ ruling. Complainant electronically served a summary of position on January 31, 2002, and re-submitted that pleading for filing as a post PHC statement.

Defendant filed a motion to dismiss on February 5, 2002, stating that the complaint fails to state a cause of action against AT&T, because Defendant complied with all Commission rules and orders and acted consistent with its tariff. Complainant submitted a response for filing.

Scope of the Proceeding

Based upon the pleadings filed to date and the representations of the parties at the PHCs, it appears the dispute between the parties centers on three issues:

1. Whether AT&T violated its intrastate tariffs when it discontinued Complainant's enrollment in the One-Rate Calling Card Plan and charged Complainant higher rates after Complainant switched to another interexchange service provider.

2. Whether AT&T charged Complainant its standard tariffed rate after it discontinued Complainant's enrollment in the One-Rate Calling Card Plan.

3. What sanctions and/or other relief should be ordered if a violation is found.

4. Whether AT&T's actions are excused because continuing Complainant's One-Rate Calling Card Plan after Complainant switched to another interexchange service provider would constitute unlawful cramming.

Defendant raised jurisdictional objections in its answer. After the PHC, Defendant submitted its intrastate One-Rate Calling Card Plan tariff. The Commission has jurisdiction over the issues raised in the complaint, as clarified in this scoping memo.

Defendant's motion to dismiss asserts the complaint fails to state a cause of action against AT&T. The complaint alleges that Defendant violated its tariffs; therefore, it states a cause of action against AT&T. Defendant's motion to dismiss is denied.

Schedule

The schedule for this proceeding is as follows:

March 15, 2002	Complainant and Defendant serve testimony and stipulation of facts.
March 27, 2002	Evidentiary hearing
....	Concurrent briefs filed, per schedule to be set by later ruling, and proceeding submitted.
....	Presiding officer's decision filed within 60 days of submission.
....	Presiding officer's decision becomes effective (unless appeal filed within 30 days per Pub. Util. Code § 1701.2(a) and Rule 8.2).

The hearing is scheduled on March 27, 2002, starting at 10:00 a.m. at the State of California Department of Education, 721 Capitol Mall, Room 466, Sacramento, CA 95814. As required by Public Utilities Code Section 1701.2(d), the time for resolution of this proceeding shall not exceed 12 months from the date on which the complaint was filed.

Category of Proceeding and Need for Hearing

This ruling confirms this case as an adjudication scheduled for hearing, as preliminarily determined in the Instructions to Answer.

Assignment of Principal Hearing Officer

ALJ Janice Grau will be the presiding officer.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The presiding officer will be Administrative Law Judge Grau.
4. This ruling confirms that this proceeding is an adjudication scheduled for hearing.
5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules Practice and Procedure.
6. AT&T Communications of California, Inc.'s motion to dismiss is denied.

Dated February 25, 2002, at San Francisco, California.

/s/ CARL W. WOOD

Carl W. Wood
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Rulings of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated February 25, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

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